

HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,)	
)	No. 2:10-CV-00315-MJP
Plaintiff,)	
)	CONSENT DECREE
v.)	
)	
CSR MARINE, INC.,)	
)	
Defendant.)	
_____)	

WHEREAS, Plaintiff Puget Soundkeeper Alliance filed a Complaint against Defendant CSR Marine, Inc. on February 22, 2010, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Defendant's facilities located in Seattle, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs;

WHEREAS, Defendant denies Plaintiff's claims and any liability for the alleged violations; and

WHEREAS, counsel for the parties to this action have engaged in discussions relating to

1 the potential settlement of this litigation, which discussions have included an assessment of the
2 facts surrounding the alleged violations; and

3 WHEREAS, Defendant has undertaken, and is implementing, measures to further ensure
4 compliance with the Clean Water Act at its facilities and to address issues raised in the notices of
5 intent to sue served by Plaintiff; and

6
7 WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the best
8 interest of the parties and the public, and that entry of this Consent Decree without additional
9 litigation is the most appropriate means of resolving these actions; and

10
11 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or
12 final adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations,
13 consent to the entry of this Consent Decree in order to avoid the risks of litigation and to resolve
14 the controversy between them.

15
16 NOW THEREFORE, without trial of any issue of fact or law, and without admission by
17 the Defendant of the facts or violations alleged in the Complaint, and upon consent of the parties,
18 and upon consideration of the mutual promises herein contained, it is hereby

19 ORDERED, ADJUDGED AND DECREED as follows:

- 20
21 1. This Court has jurisdiction over the parties and subject matter of this action;
- 22 2. The undersigned representative for each party certifies that he or she is fully
23 authorized by the party or parties whom he or she represents to enter into the terms and
24 conditions of this Consent Decree and to legally bind the party or parties and their successors in
25 interest to it.
- 26
27 3. This Consent Decree shall apply to, and be binding upon, the parties, and upon
28 the successors and assigns of the parties.

29 CONSENT DECREE - 2
No. 2:10-CV-00315-MJP

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 4. This Consent Decree shall apply to Defendant's operation and/or oversight of its
2 facilities located at or about 2620 W. Commodore Way, Seattle, Washington 98199 (the
3 “Commodore Facility”) and at or about 2401 N. Northlake Way, Seattle, Washington 98103 (the
4 “Northlake Facility) (the Commodore Facility and the Northlake Facility are collectively
5 referred to herein as the “Facilities”).
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7 5. This Consent Decree constitutes a full and complete settlement of the claims
8 alleged in the Complaint in this case and all other claims known and unknown existing as of the
9 date of entry of this Consent Decree that could be asserted under the Clean Water Act, 33 U.S.C.
10 §§ 1251-1387, arising from operations of the Facilities identified in paragraph 4 of this Consent
11 Decree.
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13 6. This Consent Decree shall not constitute evidence in any proceeding, an
14 admission or adjudication with respect to any allegation of the Complaint, any fact or conclusion
15 of law with respect to any matter alleged in or arising out of the Complaint, or the admissions or
16 evidence of any wrongdoing or misconduct on the part of the Defendant or its successor.
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18 7. In full and complete satisfaction of the claims covered by the Complaint, and all
19 other claims covered by this Consent Decree, as described in Paragraph 5, Defendant agrees to
20 abide by and be subject to the following terms and conditions:
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22 a. Defendant shall comply fully with all conditions of its National Pollutant
23 Discharge Elimination System Permits Nos. WAG03-0100 and WAG03-0013, and any
24 successor, modified, or replacement permits (the “NPDES Permits”);
25

26 b. Defendant shall submit to the Washington Department of Ecology
27 (“Ecology”) a Level Three Source Control Report, as defined in Condition S4 of the NPDES
28 Permits effective on the date that the Complaint in this matter was filed, for the Commodore
29

1 Facility (the "Commodore Report"). The Commodore Report shall be submitted to Ecology no
2 later than the earlier of: (1) November 1, 2010, and (2) the date on which Defendant is required
3 to submit a Level Three Source Control Report for the Commodore Facility under the terms of
4 the next iteration of the Washington General Boatyard Permit, anticipated to be issued by
5 Ecology sometime in 2010. The Commodore Report shall meet the requirements of WAC 173-
6 240, and shall address removal of copper, lead, and total suspended solids from stormwater
7 discharges at the Commodore Facility. The Commodore Report shall include the design and
8 construction information for stormwater treatment devices and/or structures to be installed
9 and/or constructed at the Commodore Facility, and shall include a schedule for the installation of
10 the stormwater treatment devices and/or structures that requires installation and/or construction
11 to be completed within twelve (12) months of Ecology's approval of the Commodore Report;
12 alternatively or additionally, the Commodore Report shall include design and construction
13 information to redirect all stormwater at the Commodore Facility to a sanitary sewer system, and
14 shall include a schedule that requires completion of all construction necessary to redirect the
15 stormwater at the Commodore Facility to a sanitary sewer system within twelve (12) months of
16 Ecology's approval of the Commodore Report. Defendant shall respond to any requests from
17 Ecology for revisions to the Commodore Report and/or for additional information with due
18 diligence in a good faith effort to secure Ecology's approval of the Commodore Report in an
19 expeditious manner. Defendant shall implement the Commodore Report in accordance with the
20 schedule provided therein once approved by Ecology.

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22 c. Defendant shall submit to Ecology a Level Three Source Control Report,
23 as defined in Condition S4 of the NPDES Permits effective on the date that the Complaint in this
24 matter was filed, for the Northlake Facility (the "Northlake Report"). The Northlake Report

1 shall be submitted to Ecology no later than the earlier of: (1) November 1, 2010, and (2) the date
2 on which Defendant is required to submit a Level Three Source Control Report for the Northlake
3 Facility under the terms of the next iteration of the Washington General Boatyard Permit,
4 anticipated to be issued by Ecology sometime in 2010. The Northlake Report shall meet the
5 requirements of WAC 173-240, and shall address removal of copper and lead from stormwater
6 discharges at the Northlake Facility. The Northlake Report shall include the design and
7 construction information for stormwater treatment devices and/or structures to be installed
8 and/or constructed at the Northlake Facility, and shall include a schedule for the installation
9 and/or construction of the treatment devices and/or structures that requires installation and/or
10 construction to be completed within twelve (12) months of Ecology's approval of the Northlake
11 Report; alternatively or additionally, the Northlake Report shall include design and construction
12 information to redirect all stormwater at the Northlake Facility to a sanitary sewer system, and
13 shall include a schedule that requires completion of all construction necessary to redirect the
14 stormwater at the Northlake Facility to a sanitary sewer system within twelve (12) months of
15 Ecology's approval of the Northlake Report. Defendant shall respond to any requests from
16 Ecology for revisions to the Northlake Report and/or for additional information with due
17 diligence in a good faith effort to secure Ecology's approval of the Northlake Report in an
18 expeditious manner. Defendant shall implement the Northlake Report in accordance with the
19 schedule provided therein once approved by Ecology.

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24 d. Defendant shall, for a period of three (3) years beginning on the date that
25 this Consent Decree is entered by the Court, forward copies to Plaintiff of all written or
26 electronic communications between Defendant and Ecology concerning Defendant's compliance
27 with the NPDES Permits and the Clean Water Act, including but not limited to Discharge

1 Monitoring Reports, Level One, Two, or Three response reports or similar adaptive management
2 reports, correspondence, and inspection reports. All copies shall be forwarded to Plaintiff on a
3 quarterly basis and not later than the twentieth (20) day following the end of each calendar
4 quarter;

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6 8. In addition to the claims described in paragraph 5 of this Consent Decree, this
7 Consent Decree further constitutes a full and complete settlement of all claims that Plaintiff
8 could assert against Defendant under the Clean Water Act, 33 U.S.C. §§ 1251-1387, for any
9 exceedances of the effluent limitation for lead established in the NPDES Permits that occur at
10 either the Commodore Facility or the Northlake Facility prior to the installation of the
11 stormwater treatment system or prior to stormwater being redirected to a sanitary sewer system
12 at that facility as required under paragraphs 7.b and 7.c of this Consent Decree.

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14 9. Within thirty (30) days after the date of entry of this Consent Decree by the Court,
15 Defendant shall make a payment in the amount of \$5,000 (FIVE THOUSAND DOLLARS) to
16 Citizens for a Healthy Bay for the Commencement Bay Restoration Project that is described in
17 Attachment A to this Consent Decree. Such payment shall be made by check payable and
18 mailed to Citizens for a Healthy Bay, Attn: Bill Anderson, 917 Pacific Avenue, Suite 100,
19 Tacoma, Washington 98402, and shall bear the notation "Puget Soundkeeper Alliance v. CSR
20 Marine, Inc., Clean Water Act Settlement," with a copy provided to Plaintiff;
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22
23 10. Defendant shall pay Plaintiff's reasonable attorney and expert fees and costs in
24 the amount of \$16,650 (SIXTEEN THOUSAND, SIX HUNDRED AND FIFTY DOLLARS) in
25 full and complete satisfaction of any and all claims that Plaintiff may have under the Clean
26 Water Act for fees and costs. Payment by Defendant shall be made in two (2) equal installments
27 of \$8,325 (EIGHT THOUSAND, THREE HUNDRED AND TWENTY-FIVE DOLLARS) each,
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1 with the first installment made no later than thirty (30) days after entry of this Consent Decree by
2 the Court and the second installment made no later than sixty (60) days after entry of this
3 Consent Decree by the Court. Payments shall be made by check payable and mailed to Smith &
4 Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Brian A. Knutsen.

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6 11. The Court shall retain jurisdiction over this matter and allow this case to be
7 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any
8 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any
9 dispute regarding the terms or conditions of this Consent Decree until termination of the Consent
10 Decree per paragraph 13. In the event of a dispute regarding implementation of, or compliance
11 with, this Consent Decree, the parties shall first attempt to informally resolve the dispute through
12 meetings between the parties by serving written notice of request for resolution to the parties and
13 their counsel of record. If no resolution is reached within thirty (30) days from the date that the
14 notice of dispute is served, the parties may resolve the dispute by filing motions with the court.
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17 12. The parties recognize that no consent judgment can be entered in a Clean Water
18 Act suit in which the United States is not a party prior to forty-five (45) days following the
19 receipt of a copy of the proposed consent judgment by the United States Attorney General and
20 the Administrator of the United States Environmental Protection Agency pursuant to 33 U.S.C. §
21 1365(c)(3). Therefore, upon the signing of this Consent Decree by the parties, Plaintiff shall
22 serve copies of it upon the Administrator of the United States Environmental Protection Agency
23 and the United States Attorney General.
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26 13. This Consent Decree shall take effect on the date it is entered by the Court. This
27 Consent Decree shall terminate sixty (60) days following completion of all obligations under it.
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1 14. This Consent Decree may be modified only upon the written consent of the
2 parties and the approval of the Court.

3 15. If for any reason the Court should decline to approve this Consent Decree in the
4 form presented, this Consent Decree and the settlement embodied herein shall be voidable at the
5 sole discretion of either party. The parties agree to continue negotiations in good faith in an
6 attempt to cure any objection raised by the Court to entry of this Consent Decree.
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8 16. Notifications or copies required by this Consent Decree to be made to Plaintiff
9 shall be mailed to Puget Soundkeeper Alliance, 5305 Shilshole Ave. NW, Suite 150, Seattle, WA
10 98107, or to bob@pugetsoundkeeper.org. Notifications required by this Consent Decree to be
11 made to Defendant shall be mailed to CSR Marine, Inc., 2620 W. Commodore Way, Seattle,
12 Washington 98199.
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14 Dated and entered this 10th day of August, 2010
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19 Marsha J. Pechman
20 United States District Judge
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1 PUGET SOUNDKEEPER ALLIANCE

2 Signature: s/ Bob Beckman

3 Title: Puget Soundkeeper & Executive Director

4 Dated: June 15th, 2010

5 CSR MARINE, INC.

6 Signature: s/ Scott Anderson

7 Title: President

8 Dated: 6/15/10

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CONSENT DECREE - 9
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